IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 507 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL GOPALBHAI CHATURDAS - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR BP MUNSHI for Petitioner(s) : 1,MS NIRALI B MUNSHI for Petitioner(s) : 1,
Mr. P.D. Bhate, AGP for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, dated

27.9.2004 in Revision Application No. 16/2003 in dismissing the same and confirming the order passed by the Prant Officer, Gandhinagar, dated 1-4-2000 in Fragmentation Case No. 245/1986.

2. The land bearing Survey No. 490 admeasuring 28 Gunthas was owned by one Ambalal Hiralal Thakore, the respondent No.3 herein and the petitioner purchased the said land by Registered Sale Deed dated 24.12.1980 and necessary mutation Entry also came to be made in the Revenue record. After a period of 6 years the original land-owner approached the Prant Officer, Gandhinagar, by way of Fragmentation Case No. 245/1986 alleging inter alia that by the aforesaid sale there is a breach of Section 7 of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, [“the Act” for short] and the sale transaction is in breach of the aforesaid provision. The Prant Officer, Gandhinagar after a period of 14 years of filing Fragmentation Case No. 245/1986 declared the aforesaid sale transaction as illegal under Section 9(1) of the Act by holding that by the aforesaid sale there is a breach of Section 7 of the Act. Being aggrieved and dissatisfied with the order passed by the Prant Officer, dated 1.4.2000 in Fragmentation Case No. 245/1986, the petitioner preferred the Revision Application before the Secretary (Appeals), State of Gujarat, being Revision Application No. 16/2003 and the Additional Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad by his judgment and order dated 30th June

2004 dismissed the said Revision Application confirming the order passed by the Prant Officer, Gandhinagar dated 1.4.2000. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 30.6.2004/27.9.2004 in Revision Application No. 16/2003, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri B.P. Munshi, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Prant Officer has materially erred in quashing and setting aside the sale transaction in breach of Section 7 of the Act after a period of 20 years of the sale transaction and that too in a proceeding which was initiated by the original land-owner respondent No.3 herein after a period of 6 years of the sale transaction. It is also further directed by him that in fact the proceedings at the instance of the respondent No.3 who has sold the land to the petitioner were not maintainable as in fact he was a party to the sale transaction. He has further submitted that as such there is no fragmentation and by virtue of the aforesaid sale transaction the land was not fragmented and therefore it is requested to allow the present Special Civil Application. Shri Munshi, learned advocate has relied upon the Judgment of the Division Bench of this Court in the case of

Valjibhai Jagjivanbhai Vs. State of Gujarat reported in 2005 (2) G.L.H. 34, and another Judgment of the learned Single Judge of this Court in the case of Sarvagna Navinchandra Godiawala Vs. State of Gujarat and Ors., reported in 2003(1) G.L.H. 426 in support of his submission with regard to exercise of powers by the authority after unreasonable period and the same is held to be illegal by this Court, and therefore it is requested to allow the present Special Civil Application.

4. Shri P.D. Bhate, learned AGP appearing on behalf of the State Government has vehemently submitted that when it is found by the authority that there is a breach of Section 7 of the Act the sale transaction was a nullity and therefore the powers can be exercised at any time. So far as the contention on behalf of the petitioner with regard to breach of Section 7 of the Act is concerned, Shri Bhate has submitted that as such no material was produced before the authority that there is no fragmentation and therefore the same cannot be considered by this Court in a petition under Article 226/227 of the Constitution of India and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is not in dispute that the sale transaction took place in 1980 and the petitioner

purchased the land by registered Sale Deed dated 24.12.1980 and necessary mutation Entry was also made in the revenue record. After a period of 6 years of sale transaction respondent No.3, the original landowner/seller approached the Prant Officer for the alleged breach of Section 7 of the Act. When the respondent No.3 seller was a party to the sale transaction, as such it is not open for him to challenge the sale transaction and that too after a period of 6 years which can be considered to be unreasonable for challenging the said transaction and for exercising the powers. A person who was a party to the transaction cannot subsequently say that what he has done was wrongfully done. As held by the Division Bench of this Court in the case of Valjibhai Jagjivanbhai Vs. State of Gujarat *(supra)* and the Judgment of the learned Single Judge of this Court in the case of Sarvagna Navinchandra Godiawala Vs. State of Gujarat and Ors., *(supra)* that even in a case where it is alleged that the transaction is a nullity, in that case also the proceedings are required to be initiated within a reasonable period. Under the circumstances, in the present case, quashing and setting aside the sale transaction after a period of 20 years and that too in a proceeding which came to be initiated at the instance of the seller after a period of 6 years is absolutely illegal and contrary to the Judgment of the Division Bench of this Court in the case of Valjibhai Jagjivanbhai Vs. State of Gujarat (supra) as well as

the Judgement of the learned Single Judge of this Court in the case of Sarvagna Navinchandra Godiawala Vs. State of Gujarat and Ors., (supra). The Prant Officer could not have even entertained the proceedings at the instance of the respondent No.3 seller after a period of 6 years and ought not to have held the sale transaction illegal after a period of 20 years. Consequently, the Secretary (Appeals) has also materially erred in confirming the order passed by the Prant Officer which is held to be illegal by this Court in view of the above reasons.

6. For the reasons stated hereinabove, the petition succeeds. The Judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 30.6.2004/27.9.2004 in Revision Application No. 16/2003 as well as the order passed by the Prant Officer, Gandhinagar, dated 1-4-2000 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.